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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 SYLVESTER WAYNE WILLIAMS,

12 Plaintiff,

13 vs.

14 DEPARTMENT OF VETERANS  
15 AFFAIRS, JULIE LAVERDIERE,  
16 MERCEDES DASHEFSKY, MARIPAT  
17 CORR,

18 Defendants.

CASE NO. 10CV1254-LAB (NLS)

**ORDER OF DISMISSAL**

19 On August 6, 2010, Defendants filed a motion to dismiss for failure to exhaust  
20 administrative remedies. Plaintiff Sylvester Williams did not file a timely opposition, so on  
21 September 27, the Court issued an order ("Order Requiring Opposition") vacating the  
22 upcoming hearing and ordering Williams to file an opposition to the motion to dismiss. The  
23 same day the Court by discrepancy order rejected Williams' attempted filing of a document  
24 styled "Evidence to Support Motion by Civilian Plaintiff" and attaching dozens of pages of  
documents Plaintiff wished the Court to receive as evidence.

25 In its Order Requiring Opposition, the Court told Williams it could not and would not  
26 attempt to read through his evidence and create arguments for him, and ordered him to file  
27 an opposition to the motion to dismiss no later than the close of business on Monday,

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1 October 18, 2010. The order specifically warned Williams if he didn't do so, his complaint  
2 would be dismissed without prejudice for failure to exhaust his administrative remedies.

3 Instead of obeying the Court's order, Williams again submitted documentary evidence  
4 with the Court, attaching it to a document styled "Motion to Continue Plaintiff's Complaint."  
5 This document used "continue" to mean "continue adjudicating," and urged the Court to  
6 move faster. It did not request an extension of time. Because Williams didn't attempt to file  
7 any opposition, this was accepted as his opposition to the motion to dismiss.

8 The "Motion to Continue Plaintiff's Complaint" consists of two pages complaining of  
9 delays in adjudication, and attaches multiple exhibits. The "notice" itself contains no  
10 arguments opposing the motion to dismiss. Because Williams didn't adequately oppose the  
11 motion to dismiss, this action will be dismissed as discussed in the Court's Order Requiring  
12 Opposition.

13 As the Court noted in its Order Requiring Opposition, it cannot create Williams'  
14 arguments for him. Nevertheless, the Court has reviewed the exhibits to confirm that he  
15 could not adequately oppose the motion to dismiss if given a third opportunity. Most of these  
16 are medical records attempting to substantiate Williams' claims that he is suffering from  
17 health problems, and have no bearing on whether his claims were administratively  
18 exhausted.

19 The only exhibit relating in any way to administrative exhaustion is a document from  
20 the Department of Veterans Affairs regarding Williams' disability rating. It denies his new  
21 claim for benefits, finding no connection between his military service and multiple myeloma,  
22 non-Hodgkins' lymphoma, spina bifida, and soft tissue sarcoma. But in this case Williams  
23 isn't complaining about this benefits decision. Rather, he is suing Defendants for medical  
24 malpractice, alleging "Doctors knew of my high glucose/diabetes and did not inform me of  
25 it or treat it, which led to a life threatening situation." In short, Williams has neither argued  
26 no provided documents suggesting he exhausted his claims.

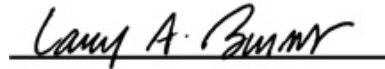
27 As the motion to dismiss points out, the Federal Tort Claims Act provides a limited  
28 waiver of sovereign immunity that allows a party to sue the United States, and its employees

1 acting within the scope of their employment, for certain common law torts. See *United*  
2 *States v. Smith*, 499 U.S. 160, 163 and n.3 (1991). The Court's jurisdiction to entertain such  
3 claims is limited by the terms of the FTCA. *Warren v. U.S. Dep't of Interior*, 724 F.2d 776,  
4 777–78 (9th Cir. 1984). One of the FTCA's requirements is that a prospective claimant must  
5 file an administrative claim with the agency whose employees allegedly injured the claimant.  
6 28 U.S.C. § 2675; *Johnson v. United States*, 704 F.2d 1431, 1442 (9th Cir. 1983)  
7 (“Exhaustion of the claims procedures established under the Act is a prerequisite to district  
8 court jurisdiction.”)

9 As the party invoking the Court's jurisdiction, Williams bears the burden of pleading  
10 facts to support the Court's exercise of jurisdiction. *McNutt v. Gen'l Motors Acceptance*  
11 *Corp. of Indiana*, 298 U.S. 178, 189 (1936). Because he did not do this even when ordered  
12 to do so, and has not shown he could do so even if given another opportunity, the motion  
13 to dismiss is **GRANTED**. This action is **DISMISSED WITHOUT PREJUDICE**.

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15 **IT IS SO ORDERED.**

16 DATED: October 20, 2010

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18 **HONORABLE LARRY ALAN BURNS**  
19 United States District Judge  
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